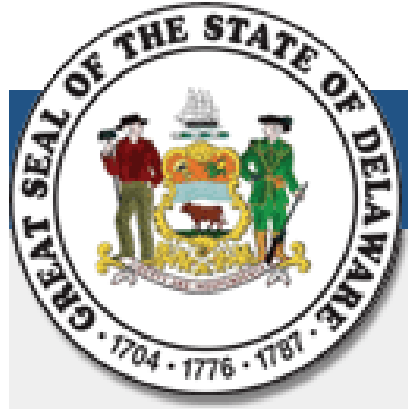


State of Delaware



Office of Pensions

McArdle Building
860 Silver Lake Blvd. Suite 1
Dover, DE 19904
Telephone (302) 739-4208

Board of Pension Trustees of the Delaware Public Employees' Retirement System Request for Proposals for Tax Counsel

Bid Number: 12102012TC

Bid Closing: January 4, 2013; 3:00 PM EST

**REQUEST FOR PROPOSALS FOR
TAX COUNSEL
ISSUED BY THE BOARD OF PENSION TRUSTEES OF
THE DELAWARE PUBLIC EMPLOYEES' RETIREMENT SYSTEM
FOR THE STATE OF DELAWARE**

Executive Summary

The Board of Pension Trustees ("Board or BOPT") of the Delaware Public Employees' Retirement System ("DPERS") is issuing this Request for Proposal (RFP) through the Office of Pensions ("Office of Pensions") to engage a law firm to act as Special Tax Counsel ("Tax Counsel") in connection with its administration of the DPERS' Trust Fund.

DPERS consists of nine qualified governmental retirement plans of the State of Delaware ("State") with total assets in excess of \$7.5 billion as of Fiscal Year End 2012. DPERS anticipates entering into negotiations with a law firm and intends to select one Tax Counsel. This RFP will define the scope of the work to be performed, the requirements the vendor ("Vendor") must address, the method for response and the administrative requirements that must be followed. DPERS will advise potential Vendors of changes to any dates as may be necessary. DPERS also reserves the right to modify and/or cancel this solicitation at any time during the RFP process.

RFP Schedule

ID	Date/Time	Activity
1	December 10, 2012	Request for Proposal issued, posted on the State's website at http://bids.delaware.gov and the Attorney General's website at http://attorneygeneral.delaware.gov .
2	December 18, 2012	All Bidder questions regarding RFP are due
2	December 21, 2012	Office of Pensions issues answers to RFP via http://bids.delaware.gov and the Attorney General's website at http://attorneygeneral.delaware.gov .website
3	January 4, 2013; 3:00 pm EST	RFP Response due date
4	January 10, 2013	Invitations to Selected Vendors for Oral Presentations (subject to change)
5	January 14-16, 2013	Vendor Oral Presentations (subject to change)
6	January 18, 2013	Recommendation made to Board
7	January 18, 2013	Decision by Board
8	January 18, 2013	Begin Negotiations (subject to change)

All Bidders must submit: (1) an original and 5 bound copies of their proposals ("Proposal") and (2) one electronic version to the contact person. Proposals may be mailed or hand-delivered for receipt no later than 3:00 p.m. EST on January 4, 2013 ("Closing Date"). All timely Proposals become the property of the State. Requests for extensions of the Closing Date will not be granted. Any request for modification must be received and approved prior to the

Closing Date of January 4, 2013. Any Proposal received after 3:00 p.m. on the Closing Date will be late and may not be considered. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), U.S. Mail, or by hand. Proposals shall be submitted to:

Cynthia L. Collins
Director of Outside Counsel, Deputy Attorney General
Carvel State Building
820 N. French Street, 6th Floor
Wilmington, Delaware 19801
Direct Dial: (302) 577-8405
Fax: (302) 577-6630
Email: Cynthia.Collins@state.de.us

Each proposal must be accompanied by a transmittal letter that briefly summarizes the Bidder's interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP that the applicant may have taken in presenting the Proposal. The BOPT reserves the right to deny any and all exceptions taken to the RFP requirements.

The cost of preparing Proposals will be borne solely by the Bidders. Proposals shall address all the questions posed by the Board in the order in which they appear in this request.

RFP Designated Contact:

Please submit all questions and requests for information to:

Cynthia L. Collins
Director of Outside Counsel, Deputy Attorney General
Carvel State Building
820 N. French Street, 6th Floor
Wilmington, Delaware 19801
Direct Dial: (302) 577-8405
Fax: (302) 577-6630
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All questions submitted, along with answers, will be consolidated into a single Q&A document. The source of the questions will not be disclosed in the document. The Q&A document will be posted on the State's website at <http://bids.delaware.gov> and the Attorney General's website at <http://attorneygeneral.delaware.gov>.

1.0 GENERAL INFORMATION

1.01 Project Scope and Objectives

The Board of Pension Trustees (“Board”) of the Delaware Public Employees’ Retirement System (“DPERS”) is seeking proposals from qualified law firms to act as special tax counsel for its pension system. The anticipated scope of services for the firm selected to act as Tax Counsel are listed below:

A. Advise the Board on compliance with all qualification issues pursuant to the Internal Revenue Code affecting the nine defined benefit retirement plans administered by DPERS which include: (1) State Employees' Pension Plan; (2) Closed State Police Pension Plan; (3) New State Police Pension Plan; (4) Old Judicial Pension Plan; (5) Revised Judicial Pension Plan; (6) Diamond State Port Corporation Pension Plan; (7) County and Municipal (General) Plan; (8) County and Municipal (Police/Firefighters) Plan; and (9) Volunteer Firemen’s Plan (collectively the “Plans”).

B. Provide sophisticated legal advice on federal tax and benefit issues and international tax matters for the Board.

C. Provide specific, written recommendations and strategies to achieve and maintain the qualified status of the Plans, including but not limited to, written recommendations on amendments to statutes, policies, and procedures to ensure the Plans are in full compliance with the Internal Revenue Code qualification criteria and constitutional law.

D. Advise the Board concerning technical compliance of plan documents, including state laws, rules, administrative policies, and procedures for all of the Plans administered by the Board to achieve and maintain the qualified status of the Plans.

E. Advise the Board concerning the operational compliance of Plans to maintain the qualified status of the Plans administered by the Board.

F. Advise the Board concerning various trust formations, to include the QEBA, and OPEB Trusts and the First State Independence Fund.

G. Assist the Board with required Cycle C filings.

H. Prepare and file documents with the IRS, or other regulatory bodies, on behalf of the Plans.

I. Represent DPERS before the IRS or other regulatory bodies as needed.

J. Present legal opinions concerning taxation of qualified benefits and investment transactions including obtaining necessary opinions, private letter rulings, and other documents from the Internal Revenue Service, or other state, or federal regulatory, or governing bodies as requested by the Board or the Pension Administrator.

K. Assist in the communication of concerns involving pension fund issues to trustees, staff, consultants, advisors and other parties, including meeting with, testifying before or responding to elected or appointed officials in the legislative and executive branches of the government.

L. Provide continuing legal representation related to daily operational and compliance issues that may arise concerning benefit and plan administration of DPERS.

M. Attend Board and/or other meetings at the request of the Board or the Pension Administrator.

1.02 Procedures

Selected Tax Counsel will work closely with the Office of Pensions' executive staff and the DAG assigned to act as general counsel to DPERS.

2.0 MINIMUM REQUIRED QUALIFICATIONS

2.01 Experience and Reputation

- A. The law firm must have been in business at least five years.
- B. The law firm should have at least five (5) or more years prior experience in representing governmental pension plans in the Tax and Benefits arena; and
- C. The law firm must designate, as a member of the team proposed for this representation, a lead attorney licensed to practice law with seven (7) or more years experience in the providing advice to governmental pension plans.

2.02 Professional Liability Insurance

The Vendor shall agree to maintain in full force and effect during the term of the Contract professional liability insurance in an aggregate amount of not less than \$10 million. In order to satisfy this requirement, the Vendor must

- A. Include a statement in its Proposal affirmatively responding to this requirement; and
- B. Include in its Proposal either -
 - 1) A certificate of insurance or letter from its insurer demonstrating that the Vendor meets this requirement, or
 - 2) A commitment letter or other evidence, satisfactory to the Procurement Officer, that Vendor will have such coverage as of the date the Contract commences.

If the Vendor is a joint venture, and one party of the joint venture does not presently have such liability insurance, this requirement may be satisfied if the members of the joint venture include in their proposal evidence, satisfactory to the Procurement Officer, that all members of the joint venture will have such coverage as of the date the Contract commences, either through actual insurance policies or an indemnity agreement by the properly insured firm, in form and substance acceptable to the Office of Pensions.

2.03 Vendor's Capacity

Each Vendor must demonstrate the capacity to perform the type of services needed by the Office of Pensions described in Section 1.01 above. The Vendor must be available at all times to render services required under the Contract.

3.0 TECHNICAL PROPOSAL FORMAT

The following information shall be provided in each proposal in the order listed below. A Vendor is expected to provide a response for each requirement listed in this RFP. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of the Office of Pensions.

3.01 General

All technical proposals shall be prepared with a concise description of the Vendor's capabilities to satisfy the minimum qualifications of Section 2 above and the information requested under Section 3 below. Vendors should organize their proposals so that their responses correspond to the specific subsections to the extent possible without unnecessary repetition.

3.02 Required Information

The proposal shall contain the information described below. Joint ventures should provide the information separately for each firm.

A. Vendor's Prior Experience

1. General Experience and Information:

- (i) Within the past three years, have there been any significant developments in your firm such as changes in ownership or restructuring? Do you anticipate any significant changes in the future? Please describe.
- (ii) Describe the on-line services, publications and other resources maintained by your firm dealing with public pension plans, including subscription services and periodicals. Will any of these resources be available to DPERS staff?
- (iii) Has your firm or an attorney in your firm's employ ever been disciplined or censured by any regulatory body? If so, describe the principal facts.
- (iv) Within the last five years, has your firm, or a partner or attorney in your firm, been involved in litigation or other legal proceedings relating to provision of legal services? If so, provide an explanation and indicate the current status or disposition.

- (v) Does your firm represent the board of trustees of any other pension plan as general fund counsel? If so, list the full name, address and telephone number of each of the pension plan and telephone number of the Executive Director or Pension Administrator and General Counsel.
- (vi) Please describe your firm's backup procedures in the event one or more attorneys assigned to DPERS leave the firm. Identify the key attorney who will be the primary contact and lead counsel in providing services to DPERS, whose continuing status as such is an essential element of this contract.
- (vii) Describe your disaster recovery plan and facilities.

2. Tax Counsel Experience:

- (i) Provide a list engagements where you acted as "tax counsel" or counsel to a governmental pension plan or the plan's trustees before the Internal Revenue Service in the following areas: governmental defined benefit plan qualification issues pursuant to Internal Revenue Code § 401(a), plan compliance matters, determination letters, voluntary compliance procedures, determination letter filings, private letter ruling filing, opinion letter filings, vested rights issues and complicated tax matters.
- (ii) List all attorneys you would expect to render legal services to DPERS if your firm is engaged to serve as special tax counsel and the area of specialization of each. Describe the role of each attorney who would be assigned to DPERS. Are any of the attorneys listed pursuant to the prior question rated by Martindale Hubbell? If so, provide the Martindale Hubbell rating for each.
- (iii) Describe your legal team's experience with similar work performed for other pension clients. State whether or not the attorneys assigned to this team have any responsibilities other than providing legal services, and if so, specify such responsibilities.
- (iv) Monitoring, oversight and ongoing administration services. Provide a brief description of the your experience and capacity to provide the types of

services described in this RFP by listing the approximate number of representations during the last five (5) years, to the extent possible. Of those, select no more than three (3) such representations.

2. Related Legal Experience.

Provide a brief description of areas of the law related to the purpose of this RFP in which the Vendor has an expertise, including, but not limited to, securities law, other transactional finance practice areas, corporate or partnership law, pension law (public or private), bankruptcy law, and contract law.

B. Vendor's Team (Specific Individuals Responsible for Performance of Contract). Provide a detailed description of the team that would provide services identified in this RFP and include the following information:

1. The identity of the individuals, the areas of law in which each specializes and the type of tax and benefit administration which the attorney has handled, the number of years of experience in such areas, and the extent to which each has analyzed laws and provided advice on issues relevant to the purpose of this RFP.
2. Resumes of each member of the team, attached to the Proposal as Appendix A.
3. The courts in which each is admitted to practice, the year of admission, and the location of the principal place or places of business, if not included on resume.
4. State the availability of individuals proposed for this representation during the term of the Contract, specifically including the availability of senior members of the team.
5. The planned division of responsibilities among the members of the team, including an approximate percentage of the time each individual is expected to devote to performing services for the Office of Pensions (the total of the percentages shall equal 100%).
6. For a joint venture, discuss the division of responsibilities between the venturing entities, including the type and approximate amount of work to be performed by each party, and the approximate percentage of time each party expects to devote to performing services for the Office of Pensions.

C. Conflicts of Interest.

1. In general, if a conflict of interest arises, the Vendor should be willing to continue to represent DPERS and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. The Attorney General may entertain a request for a waiver of a Vendor's representation of a party in litigation involving a unit of State government other than the Board, or DPERS, but does not expect to waive any other conflicts. DPERS reserves the right, in its sole discretion, to select another approved law firm to work on a particular matter if a conflict is not resolved to its satisfaction.

Each Vendor shall identify any conflicts of interest which may arise if the Vendor serves as Tax Counsel and shall describe in its Proposal how it proposes to deal with such conflicts. Conflicts may arise not only from attorneys named on the contract but also from representation of parties involved in the transactions or other matters involving the Board, or DPERS by any other member of the firm, regardless of whether that attorney is in the same office or a different office of the firm.

2. Conflict Check System.

The Vendor shall describe in detail its existing system for identifying conflicts of interest in undertaking new representations. The description should include information about who maintains the records, how often the information is updated and at what stage of representation the check is made. The Vendor shall provide a copy of its written conflicts policy or explain in detail why there is no written policy.

3. Potential Conflicts.

Prior to entering into any contract, the Vendor shall provide assurances that potential conflicts have been discussed with other existing clients of the Vendor who might be requested to engage other counsel for a specific transaction, and that those existing clients are amenable to such an inconvenience.

4.0 PRICE PROPOSAL FORMAT**4.01 Billing Rates**

- A. Current billing rates for all attorneys assigned to represent DPERS pursuant to this RFP;
- B. Current billing rates for all para-professionals assigned to represent DPERS pursuant to this RFP;
- C. No compensation will be permitted for the services of law clerks and law school graduates not admitted to practice.

4.02 Alternative Pricing Proposals

Although each Vendor is required to submit a price proposal containing the information set forth in Part 4.0, DPERS will also accept proposals for alternative billing arrangements, which enhance the value and efficiency of the services to be provided. The Vendor may submit a statement, not more than one page in length, with respect to any alternative pricing proposal.

5.0 EVALUATION OF PROPOSALS

The selection committee shall evaluate the proposals. During the evaluation process the selection committee may, at its discretion, request any or all firms to make oral presentations. Such presentations will provide firms with an opportunity to answer questions about a firm's Proposal. Not all firms may be asked to make such oral presentations.

5.01 Selection Criteria

The selection of the firm or firms to provide legal services will be based on an evaluation of the Proposals to determine which Proposal reflects the best value to DPERS in which technical factors will be considered significantly more important than cost of services. The selection of the firm to provide legal services will be based upon the following technical factors in descending order of importance:

- A. Experience of the firm and the individual attorneys representing governmental pension plans before the IRS in tax and benefit matters;
- B. Experience of the firm and the individual attorneys representing governmental pension plans generally in tax and benefit matters;
- C. Proposed work plan, soundness of approach and understanding of the needs of DPERS;
- D. Demonstrated ability to perform the services referred to in the Scope of Tax Counsel Legal Services; and
- E. References and recommendations of other clients.

5.02 Contract Negotiation

DPERS intends on opening negotiations with the Vendor, that DPERS determines, has a reasonable likelihood of being awarded a contract based on the proposal, interview and supplemental submissions (if any) that are submitted. Negotiations will focus on any technical weaknesses or deficiencies in proposals as well as cost and pricing issues.

A written contract with the law firm(s) selected will be required, which must be approved by the Attorney General of the State of Delaware and the Governor of the State of Delaware pursuant to 29 *Del. C.* § 2507. The successful firm will be required to comply with the DDOJ Outside Counsel Billing Policy.

5.03 Contract Award

DPERS reserves the right to award all, part, or none of this contract and intends to award contracts to more than one law firm if deemed appropriate and desirable.